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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,112	02/11/2004	Vincent Charles Konzola	RPS920030163US1	2680
45211	7590	03/27/2008		
Robert A. Voigt, Jr. WINSTEAD SECHREST & MINICK PC PO BOX 50784 DALLAS, TX 75201				
EXAMINER				
HESS, DANIEL A				
ART UNIT		PAPER NUMBER		
2876				
MAIL DATE		DELIVERY MODE		
03/27/2008		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VINCENT CHARLES CONZOLA

Appeal 2007-4339
Application 10/776,112
Technology Center 2800

Decided: March 27, 2008

Before KENNETH W. HAIRSTON, ANITA PELLMAN GROSS, and
KARL EASTHOM, *Administrative Patent Judges*.

GROSS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's rejection of claims 9 through 17 and 24 through 32, which are all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

Appellant's invention relates to a check-out method and system which include incorporating a security tag on the product and deactivating the tag

only after one or more physical characteristics of the product are verified.

Claim 9 is illustrative of the claimed invention, and it reads as follows:

9. A check-out method for a product having a security tag associated therewith, comprising the steps of:

storing one or more physical characteristics for said product;

recalling said one or more physical characteristics when a consumer checks out said product;

placing said product in a substantially enclosed area;

examining said product while said product is in said substantially enclosed area;

establishing one or more physical features for said product while said product is in said substantially enclosed area;

comparing said one or more physical characteristics to said one or more physical features;

generating a signal if said one or more physical characteristics substantially match said one or more physical features; and

deactivating said tag with a deactivation device after receipt of said signal and while said product is in said substantially enclosed area.

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Novak	US 5,497,314	Mar. 05, 1996
Bellis, Jr. (Bellis)	US 2003/0024982 A1	Feb. 06, 2003

Claims 9 through 17 and 24 through 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Novak and Bellis.

We refer to the Examiner's Answer (mailed April 18, 2006) and to Appellant's Brief (filed January 30, 2006) and Reply Brief (filed June 5, 2006) for the respective arguments.

SUMMARY OF DECISION

As a consequence of our review, we will affirm the obviousness rejection of claims 9 through 17 and 24 through 32.

OPINION

Appellant (Br. 4-7) contends that with regard to claims 9 and 24, Novak and Bellis fail to teach or suggest (1) a security tag associated with a product and (2) deactivating the tag with a deactivation device while the product is in a substantially enclosed area, but after receipt of a signal indicating that at least one stored physical characteristic for the product substantially matches at least one feature of the product established in the enclosed area. Further, Appellant contends (Br. 7-14) that Novak and Bellis fail to teach or suggest the limitations of claims 15 through 17, 30 through 32, and the remaining limitations of claims 24 through 29 other than the enclosed area and the database. Appellant (Br. 17-20) argues the Examiner's rationale for combining the two references is improper. The Examiner asserts (Ans. 3-9) that Novak and Bellis collectively teach all of the limitations of claims 9 through 17 and 24 through 32. The issue, therefore, is whether Novak and Bellis can be combined to render obvious all of the claim limitations of claims 9 through 17 and 24 through 32.

With regard to claim 9, Bellis discloses (paragraph 0019) bagging station 270 may include a scale to weigh an item and report the weight to

computer 260. The computer compares the measured weight to a weight value for the item stored in the computer memory or a database. Bellis discloses (paragraph 0020) that there may also be an item-shape sensor in a tunnel 602, which includes an electronic curtain at each end, thereby making the tunnel substantially enclosed. The item's height, width, or length of the item may be measured and compared by the computer with the corresponding characteristics stored in the computer memory (or database, according to paragraph (0019)). Bellis discloses (paragraph 0030) that the item-shape sensor may be an alternative to the weight sensor and may measure size, shape, and/or color. Thus, Bellis discloses storing a physical characteristic of the product, recalling the characteristic when the item is checked out, placing the item in an enclosure, examining the item in the enclosure, establishing in the enclosure at least one physical feature for the product, and comparing the measured physical feature or features to the recalled physical characteristics. Further, the features can include weight, shape, size, and/or color, as recited in dependent claims 10 through 14 and 25 through 29.

Bellis discloses (paragraph 0027) approving the transaction with a beep or other sign after the security weight information is verified. If the weight sensor were replaced with the item shape sensor, common sense would render obvious approving the transaction after the shape was verified. Thus, Bellis discloses generating a signal if a physical characteristic matches a stored feature.

Bellis discloses (paragraph 19) that the bagging station further includes a deactivator for deactivating a security tag on the item after "verifying that all the items have been scanned into the self-checkout

system." Bellis discloses (paragraph 0040) that the security tag is for added security "to prevent someone from removing items from the store without properly checking the items out. If an item is properly scanned, the electronic-article-surveillance deactivator **230** may be actuated, causing ... the tag on the item to be deactivated." Although Bellis states that deactivating the security tag occurs after verifying that the item has been properly scanned, since the security tag is for further security, and since deactivation occurs at the bagging station where the weight of the item is verified, either "properly scanned" means that the weight has been verified or it would have been obvious to deactivate the tag after verifying the weight, for the additional security. Furthermore, where the weight sensor is replaced by a shape sensor, it would have been obvious to move the deactivation to the tunnel where the shape is sensed instead of at the bagging station where the weight is sensed. Accordingly, Bellis discloses and/or renders obvious including a security tag on a product and deactivating the tag with a deactivation device while the product is in the enclosed area.

The only limitation of claim 9 not disclosed by Bellis is deactivating the tag "after receipt of said signal." However, as stated *supra*, it would have been obvious to deactivate the tag only after the product's shape has been verified. For the deactivation device to know when the shape has been verified, the sensor would clearly have to send a signal to the deactivation device indicating the shape matches. Accordingly, claims 9 through 14 would have been obvious over Novak and Bellis, with Novak being cumulative to the teachings and suggestions of Bellis.

With respect to claims 15 and 30, Bellis discloses (paragraph 0029) that the customer may verify a single item at a time. To do so would require

ensuring only a single item is in the tunnel at a time. Further, with regard to claims 16, 17, 31, and 32, if multiple items were detected in the tunnel, common sense would suggest employing a signal of some sort to alert store employees to remove the extra items, and to hold off deactivating the tags on the items if an alert signal has been generated. Accordingly, the limitations of claims 15 through 17 and 30 through 32 would have been obvious over Novak and Bellis, with Novak being cumulative to the teachings and suggestions of Bellis.

Reviewing claim 24, we have already discussed *supra* a security tag on a product, a substantially enclosed area, and a database for storing physical characteristics for the product. As to a scanner for retrieving characteristics from the database, Bellis discloses (paragraph 0016 and 0027) an identification code reader, or a scanner, identifies the product entering the system, retrieves weight information for the product (or obviously shape information if a shape sensor replaces the weight sensor), and communicates the information to computer 260, the computer that compares the measured feature with the stored characteristics. Accordingly, Bellis discloses a scanner for retrieving the physical characteristics from the database.

As discussed *supra*, Bellis discloses an evaluator in the tunnel for establishing features of the product and a computer for comparing the features to the stored characteristics and a deactivation device for deactivating the security tag. In addition, we indicated *supra* that it would have been obvious to the skilled artisan for the computer to signal the deactivation device when a match is found so as not to deactivate the tag of a product that is not properly in the tunnel. To send such a signal, the system

must include an electronic circuit for generating the signal. Accordingly, all of the limitations of claim 24, and dependent claims 25 through 32, would have been obvious over Novak and Bellis, with Novak being cumulative to the teachings and suggestions of Bellis.

Appellant (Br. 17-20) argues that the Examiner has failed to provide teachings from the references themselves for modifying and combining the references. Appellant provides substantially the same arguments in the Reply Brief. We note that arguments directed to combining the two references are considered moot, as we have found that the teachings of Novak are cumulative to those of Bellis. Further, regarding modifying Bellis, the Supreme Court has held that in analyzing the obviousness of combining elements, a court need not find specific teachings, but rather may consider "the background knowledge possessed by a person having ordinary skill in the art" and "the inferences and creative steps that a person of ordinary skill in the art would employ." *See KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007). To be nonobvious, an improvement must be "more than the predictable use of prior art elements according to their established functions," and the basis for an obviousness rejection must include an "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* In other words, common sense, for example, can provide the requisite motivation for modifying. Therefore, Appellant has failed to convince us of any error in the Examiner's obviousness rejection over Novak and Bellis, and we will sustain the obviousness rejection of claims 9 through 17 and 24 through 32.

ORDER

The decision of the Examiner rejecting claims 9 through 17 and 24 through 32 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

Robert A. Voigt, Jr.
WINSTEAD SECHREST & MINICK PC
PO BOX 50784
DALLAS, TX 75201